



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CWA/169672

PRELIMINARY RECITALS

Pursuant to a petition filed October 16, 2015, under Wis. Admin. Code § HA 3.03, to review a decision by the Bureau of Long-Term Support in regard to Medical Assistance, a hearing was held on November 20, 2015, at Menomonie, Wisconsin.

The issue for determination is whether the IRIS program can reduce the supportive home care services it provides to the petitioner

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Bureau of Long-Term Support
1 West Wilson
Madison, WI

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of Dunn County.
2. The petitioner receives medical assistance waiver services through IRIS.
3. The petitioner is diagnosed with type 2 diabetes, diabetic nephropathy, chronic pain syndrome, acute vascular insufficiency, and migraines.

4. The petitioner requires ongoing help with activities and instrumental activities of daily living. When dressing, she requires help putting on her bra, pants, sock, and shoes, and partial assistance with her shirt. When bathing, she needs help in and out of the tub. She requires help getting on and off the toilet on her "bad days." She has incontinence at least once a month. She does not require help eating.
5. The petitioner uses a walker, cane, and wheelchair in her home.
6. The petitioner lives with her two adult children and another adult.
7. The IRIS program pays the petitioner's daughter to care for her.
8. The IRIS program reimburses the petitioner's son for mileage to take her to medical appointments.
9. The IRIS program notified the petitioner on September 30, 2015, that it was reducing her supportive home care hours from 70 to 10.75 per month.
10. The petitioner also receives 72 hours a month of self-directed personal services. Up to one-third, or 24, of these hours can be used to provide incidental tasks such as laundry and light housecleaning.

DISCUSSION

The Bureau of Long-Term Support seeks to reduce the supportive home care the petitioner receives through IRIS, an alternative to the Family Care and Partnership programs that allows persons to direct their own care. *IRIS Policy Manual*, § 1.1. IRIS, which stands for "Include, Respect I Self-Direct," was developed pursuant to a medical assistance waiver Wisconsin obtained under section 6087 of the Deficit Reduction Act of 2005 (DRA), and section 1915(j) of the Social Security Act. The petitioner currently receives 70 hours of supportive home care per month. The IRIS program seeks to reduce this to 10.75 hours per month.

The waiver document providing the program's authority is available at <http://www.cms.gov/MedicaidStWaivProgDemoPGI/MWDL/list.asp>. The federal government's general guidance for the program is found at 42 C.F.R. § 441.450 – 484. Those regulations require the Department's agent to assess the participant's needs and preferences, and then develop a service plan based on the assessed needs. *Id.*, § 441.466. The service plan may include personal care and homemaker services. *Id.*, § 440.180(b). Further, "all of the State's applicable policies and procedures associated with service plan development must be carried out..." *Id.* § 441.468. Wisconsin IRIS policies are found online at <https://www.dhs.wisconsin.gov/publications/p0/p00708.pdf>. A related version that provides work instructions is found at <https://www.dhs.wisconsin.gov/publications/p0/p00708a.pdf>.

The department contends that the petitioner no longer requires 70 hours of supportive home care each month because she also receives 72 hours of self-directed personal services, and up to one-third, or 24, of these hours can be used to provide incidental tasks such as laundry and light housecleaning. It also contends that the family members she lives with can provide what it terms "natural supports."

State regulations require when determining whether a service is necessary, an agency must review, among other things, the medical necessity of the service, the appropriateness of the service, the cost of the service, the extent to which less expensive alternative services are available, and whether the service is an effective and appropriate use of available services. Wis. Admin. Code, § DHS 107.02(3)(e)1.,2.,3.,6., and 7. "Medically necessary" means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;

2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
3. Is appropriate with regard to generally accepted standards of medical practice;
4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
5. Is of proven medical value or usefulness and, consistent with s. HFS 107.035, is not experimental in nature;
6. Is not duplicative with respect to other services being provided to the recipient;
7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Admin. Code, § DHS 101.03(96m).

The term *natural supports* refers to the concept that when a recipient lives with other adults, IRIS is meant to pay only for the additional care that results from the recipient living there. The petitioner lives with her two adult children and one other adult. It does not take any longer to shovel walks or to mow the lawn because she is there. It takes some extra time, but not a lot, to clean the house or prepare a meal, assuming the petitioner eats when and what others eat. But any care the petitioner receives for things such as with bathing or dressing is time the provider does not spend doing something that also benefits herself.

TMG, which represented the IRIS program at the hearing, used the personal care screening tool to determine the care the petitioner required. The tool is a computer program that assesses an average amount of time a chore should take and then multiplies it by how often the recipient requires the task to be performed. In the petitioner's case, TMG divided tasks such as housecleaning that everyone in the household requires by the number of persons in the household.

Of course, these calculations are only as accurate as the information fed into the screening tool. The petitioner is diagnosed with type 2 diabetes, diabetic nephropathy, chronic pain syndrome, acute vascular insufficiency, and migraines. Her condition varies from day to day. She often uses a walker or cane to get around her house; she has a manual wheelchair but needs someone else to push it because of problems with her arm. She requires ongoing help with activities and instrumental activities of daily living. When dressing, she requires help putting on her bra, pants, sock, and shoes, and partial assistance with her shirt. When bathing, she needs help getting in and out of the tub. She requires help getting on and off the toilet on her "bad days." She has incontinence at least once a month.

Based upon her health and the availability of other adults in her household to share tasks they all need done such as cleaning, I find that TMG reasonably found that she requires 10.75 hours of supportive home care per month in addition to the 72 hours per month of self-directed personal care she already receives. I base this in part on the fact that the petitioner did not offer any alternative amount or provide any detailed testimony supporting the need for her current allocation.

I do note that there is one potential problem with TMG's proposal. The petitioner receives her self-directed supports through another source of funding. I asked TMG's representatives if they coordinated with that alternative source to ensure that the petitioner would continue to receive those funds and they conceded that they had not. If the petitioner's hours of self-directed personal care are in the process of being reduced, she may file a request for a new hearing in this matter. (She may also file a separate appeal against the provider of those services.) In future matters, I suggest that TMG coordinate its services with

other funding sources that provide overlapping services because such coordination is necessary to avoid duplication of services.

CONCLUSIONS OF LAW

The IRIS program correctly seeks to reduce the petitioner's supportive home care services to 10.75 hours a week because additional services are not necessary to meet her medical needs and they duplicate services she already receives.

THEREFORE, it is

ORDERED

The petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 9th day of December, 2015

\sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on December 9, 2015.

Bureau of Long-Term Support